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LAW (LEGISLATIVE DRAFTING) DEPARTMENT

(GROUP-2)

NOTIFICATION

Jaipur, November 10 , 2021

NO. F.3(1) Law/2/2021- The following Ordinance promulgated by the President of India is hereby republished for general information.

Praveer Bhatnagar,
Principal Secretary to the Government.

(First published in Gazette of India, Extraordinary Part II, Section I dated 30th June, 2021)

THE ESSENTIAL DEFENCE SERVICES ORDINANCE, 2021

No. 7 OF 2021

Promulgated by the President in the Seventy-second year of the Republic of India.

An Ordinance to provide for the maintenance of essential defence services so as to secure the security of nation and the life and property of public at large and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Essential DefenceServices Ordinance, 2021. Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2.(1) In this Ordinance, unless the context otherwise requires,— Definitions.

(a) "essential defence services" means —

(i) any service in any establishment or undertaking dealing with production of goods or equipment required for any purpose connected with defence;

(ii) any service in any establishment of, or connected with, the armed forces of the Union or in any other establishment or installation connected with defence;

(iii) any service in any section of anyestablishment connected with defence, on the working of which the safety of such establishment or employee employed therein depends;

(iv) any other service, as the Central Government may, by notification in the Official Gazette, declare to be essential defence services, the cessation of work of which would prejudicially affect the —

(I) production of defence equipment or goods; or

(II) operation or maintenance of any industrial establishment or unit engaged in production of goods or equipment required for any purpose connected with defence; or

(III) repair or maintenance of products connected with defence;

(b) "strike" means the cessation of work, go-slow, sit down, stay-in, token strike, sympathetic strike or mass casual leave, by a body of persons engaged in the essential defence services, acting in combination or a concerted refusal or a refusal under a common understanding of

any number of persons who are or have been so engaged to continue to work or to accept employment, and includes—

(i) refusal to work overtime, where such work is necessary for the maintenance of the essential defence services;

(ii) any other conduct which is likely to result in, or results in, cessation or retardation or disruption of work in the essential defence services.

(2) Words and expressions used herein and not defined but defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act.

14 of 1947.

Power to prohibit strikes in essential defence services.

3. (1) If the Central Government is satisfied that in the—

(a) public interest; or

(b) interest of the sovergnity and integrity of India; or

(c) security of any State; or

(d) public order; or

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in the essential defence services.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by such order.

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order made under sub-section (1) —

(a) no person engaged in the essential defence services shall go or remain on strike;

(b) any strike declared or commenced, whether before or after the issue of such order, by persons engaged or employed in such services shall be illegal.

Removal of persons.

4. Where any order has been issued under sub-section (1) of section 3, any police officer may take all such measures as such officer may deem fit including the use of police force, if he considers necessary, to remove any person, whose presence in any area connected with the—

(a) defence equipment production services; or
(b) operation or maintenance of any industrial establishment or unit engaged in production or manufacturing of goods or equipment required for any purpose connected with defence; or
(c) repair or maintenance of products connected with defence,

would be prejudicial to the functioning, safety or maintenance of the essential defence services.

Dismissal of employees participating in illegal strikes.

5. (1) Any person —

(a) who commences a strike which is illegal under this Ordinance or goes or remains on, otherwise takes part in, any such strike; or

(b) who instigates or incites other persons to commence, or go or remain on, or otherwise take part in, any such strike,

shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.

(2) Notwithstanding anything contained in any other law for the time being in force or under the terms and conditions of service applicable to any person employed in the essential defence services, before dismissing any person under sub-section (1),no inquiry shall be necessary if the authority empowered to dismiss or remove such person is satisfied that for some reason,

to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

Penalty for illegal strikes.

6. Any person, who commences a strike which is illegal under this Ordinance or goes or remains on, or otherwise takes part in, any such strike, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both.

Penalty for instigation, etc.

7. Any person, who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Ordinance, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifteen thousand rupees, or with both.

Penalty for giving financial aid to illegal strikes.

8. Any person, who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Ordinance, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifteen thousand rupees, or with both.

Power to prohibit lock-outs in any industrial establishment or unit engaged in essential defence services.

9.(1) If the Central Government is satisfied that in the—

(a) public interest; or

(b) interest of the sovergnity and integrity of India; or

(c) security of any State; or

(d) public order; or

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may by general or special order, prohibit lock-outs in the industrial establishments or units engaged in the essential defence services.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by such order.

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order

extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary so to do.

(4) Upon the issue of an order under sub-section (1),—

(a) no employer engaged in the essential defence services shall commence any lock-out; and

(b)any lock-out declared or commenced, whether before or after the issue of such order, by any employer engaged in the essential defence services shall be illegal.

(5) Any employer of an industrial establishment or unit engaged in the essential defence services, who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this section, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both.

Power to prohibit lay-off in any industrial establishment or unit engaged in essential defence services.

10. (1) If the Central Government is satisfied that in the—

(a) public interest; or

(b) interest of the sovergnity and integrity of India; or

(c) security of any State; or

(d) public order; or

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may, by general or special order, prohibit lay-off, on any ground other than shortage of power or natural calamity, of any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any industrial establishment or unit engaged in the essential defence services.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by the order.

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order under sub-section (1),—

(a) no employer in relation to an establishment to which such order applies shall lay-off or continue the lay-off any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any industrial establishment or unit engaged in the essential defence services, unless such lay-off is due to shortage of power or natural calamity, and any laying-off or continuation of laying-off shall, unless such laying-off or continuation of laying-off is due to shortage of power or natural calamity, be illegal;

(b) a workman whose laying-off is illegal under clause (a) shall be entitled to all the benefits under any law for the time being in force as if he had not been laid-off.

(5) Any employer, of an industrial establishment or unit engaged in the essential defence services, who lays-off or continues the laying-off of any workman shall, if such laying-off or continuation of laying-off is illegal under this section, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both.

Power to arrest without warrant.

11. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer may arrest without warrant any person who is reasonably suspected to have committed any offence under this Ordinance.

2 of 1974.

Offences to be tried summarily.

12. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Ordinance shall be tried in a summary way by any Metropolitan Magistrate or any Judicial Magistrate of the first class, specially empowered in this behalf

2 of 1974.

by the State Government and the provisions of sections 262 to 265 (inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in a case of conviction for any offence in a summary trial under this section, it shall be lawful for such Magistrate to pass a sentence of imprisonment for any term for which such offence is punishable under this Ordinance.

Cognizance of offences.

2 of 1974.

13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Ordinance shall be cognisable and non-bailable.

Reference of other laws in certain areas.

14. Any reference in this Ordinance to any law which is not in force in any area and to any authority under such law shall, in relation to that area, be construed as a reference to the corresponding law in force in that area and to the corresponding authority under such corresponding law.

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer for anything which is in good faith done or intended to be done under this Ordinance.

Ordinance to override other laws.

14 of 1947.

16. The provisions of this Ordinance and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force.

Amendment of Act 14 of 1947.

17. In the Industrial Disputes Act, 1947, in section 2, in clause (n), in sub-clause (ia), for the words "or dock", the words "or dock or any industrial establishment or unit engaged in essential defence services" shall be substituted.

Laying of notifications before Parliament.

18. Every notification issued under this Ordinance shall be laid, as soon as may be after it is made or issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in such notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such

modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

RAM NATH KOVIND,
President.

ANOOP KUMAR MENDIRATTA,
Secretary to the Govt. of India.